IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Het Ram. Versus State of Rajasthan.

S.B. Criminal Revision No. 753/2005 against the order dated 01-8-2005 passed by the Addl Chief Judicial Magistrate, Sri Ganganagar in Criminal Complaint Case No.811/2004.

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Date of Order: May 18, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.S.S. Kharlia, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.
Mr. B.S. Rathore, for the non-petitioner No.2.

BY THE COURT:

The instant criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 01-8-2005 passed by the Additional Chief Judicial Magistrate, Sri Ganganagar (for short, "the trial Court) in Criminal Complaint Case No.811/2004, whereby the trial Court took cognizance of the offence under Sections 420, 467, 468 and 471 IPC against the petitioner and issued process. Aggrieved by the order impugned taking cognizance and issuing process, the petitioner

has filed the instant criminal revision.

I have heard learned counsel for the parties. Perused the order impugned and the material placed on record.

It is contended by the learned counsel for the petitioner that the petitioner advanced a loan of Rs.6 lac to the complainant/non-petitioner No.2 on 20-6-2001 and on the very day, at the time of financing the loan, a cheque of Rs. 8 lac was handed over to the petitioner though it was of a future date i.e. 20-1-2004. The cheque, on being presented to the bank, was dishonoured and, therefore, proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") were initiated against the non-petitioner No.2. Learned counsel submits that this complaint is to preempt the proceedings initiated by the petitioner against the non-petitioner No.2 under Section 138 of the Act . He has relied on a decision of the Hon'ble Supreme Court in Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltdrd. & ors., 2000 Cri.L.J. 174.

Learned Public Prosecutor and the learned counsel appearing for the complainant submit that the trial Court, on the basis of the material on record prima facie came to the conclusion that the receipt dated 20-6-2002 is a forged one an it is alleged to have been forged by the petitioner. The complainant, having come to know that the petitioner has forged

the receipt as also misused the cheques which were signed by the non-petitioners No.2, immediately contacted the bank and got the order for "stop payment" and, therefore, according to learned counsel appearing for the complainant, the judgment relied on by counsel for the petitioner has no application on the facts and circumstances of the instant case.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

From the impugned order and the record, it appears that in the year 2001, a petroleum out-let on National Highway No.15 at Chak No.4-ML was allotted by the Indian Oil Corporation in favour of non-petitioner No.2. The petitioner, being the brother-in-law of the husband of non-petitioner No.2, was entrusted to look-after the running of the petroleum out-let. The cheques, which were to be given to the Indian Oil Corporation for getting the petrol purchased, duly signed by her but blank were given to the petitioner. Certain papers on letter-head of the petrol pump were also given to the petitioner. When the non-petitioner No.2 came to know that the petitioner has misused his position, he was removed from the petroleum out-let. On inquiry from various agencies, the non-petitioner No.2 came to know that the petitioner has misused the blank cheques handed-over to him for giving to the Indian Oil Corporation. A letter of "stop payment" was sent to the bank on 3-7-2002, on

which the bank recorded "stop payment" on 5-7-2002. It appears that the cheque was presented in the bank somewhere after 19-7-2004, whereas the stop payment was recorded about two years before presentation of the cheque in the bank.

The trial Court, considering various material placed before it, prima facie came to the conclusion that the receipt, on which the petitioner relies that he had advanced the loan of Rs.6 lac to the complainant/non-petitioner No.2, is a forged one. Considering the material on record, the trial Court prima facie came to the conclusion that there is a ground to proceed against the petitioner for the offence noticed-above and accordingly the trial Court took cognizance and issued the process.

The judgment relied on by the learned counsel for the petitioner turns on its own facts and has no application to the facts and circumstances of the instant case for the reason that the stop payment was recorded on 5-7-2002 and the cheque was presented to the bank on 19-7-2004, i.e. after more than two years. There is prima facie evidence on record that the receipt, on which the petitioner claims the cheque amount, is forged as has been held by the trial Court. In the circumstances, therefore, it cannot be said that the instant complaint is to preempt the proceedings initiated by the petitioner under Section 138 of the Act. In this view of the matter, I do not find any error in the order impugned.

Consequently, the revision petition is dismissed. Ad-interim order dated 06-9-2005 is vacated and the stay petition stands dismissed.

(H.R. PANWAR), J.

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